

IBLA 86-995

Decided October 27, 1987

Appeal from a decision of the Montana State Office, Bureau of Land Management, cancelling oil and gas lease M 60437.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Simultaneous

Where a simultaneous noncompetitive oil and gas lease applicant uses as its mailing address a post office box rented and exclusively controlled by officers of a lease filing service, the applicant is merely using an alternate address for service, in violation of 43 CFR 3112.2-1(b), which bars the use on the application of the address of any entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Cancellation

Where a simultaneous noncompetitive oil and gas lease applicant violates 43 CFR 3112.2-1(b) by using a post office box rented and exclusively controlled by officers of a lease filing service, it has failed to submit an application that would qualify it to receive an oil and gas lease, and administrative cancellation of a lease issued pursuant to the application is required.

APPEARANCES: Ervin F. Bork, for appellant; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

This appeal concerns a decision by the Montana State Office, Bureau of Land Management (BLM), cancelling Federal oil and gas lease M 60437, issued

effective October 1, 1984, to a group known as Satellite 8309119. This group was assembled by Satellite Energy Corporation (SEC), a private lease-filing service. Many other similar groups assembled by SEC (the "Satellite groups") made filings in the Federal simultaneous oil and gas leasing program in various BLM offices from November 1982 through August 1985.

The United States District Court for the District of Columbia described the operation of SEC as follows:

Satellite Energy Corp. ("SEC") is a lease filing service which, among other things, forms "pools" of applicants from its clientele to participate in the SOG [simultaneous noncompetitive oil and gas lease application] system. \* \* \* Each pool is composed of individual United States citizens who have minimum five percent equity interests in the pool. In addition, the pool members pay SEC a fee for assistance in selecting which parcels to apply for and in completing the lease applications. [T]he articles for each \* \* \* pool appoint Mr. Terence R. Corwin, a member selected by SEC, to act as each pool's "nominee." As "nominee," Terence Corwin "is authorized to act on behalf of all members with regard to a lease(s) issued to [a pool]; and to act as attorney-in-fact for all members whenever necessary in connection with the [SOG program] or an issued lease(s)." Terence Corwin is also the president of SEC and maintains a five percent interest in each of the \* \* \* pools. [Citations omitted.]

Satellite 8301123 v. Hodel, 648 F. Supp. 410, 411-12 (D.D.C. 1986).

The group known as Satellite 8309119, acting through SEC, filed one simultaneous noncompetitive lease application that was drawn with first priority, to-wit: M 60437 for parcel MT-158 in the September 1983 drawing. On September 24, 1984, BLM issued a lease to Satellite 8309119, effective October 1, 1984.

However, on March 6, 1986, BLM issued a decision cancelling the lease, citing the following violation of the regulations: 1/

[T]he address used by your group is effectively a mail drop for Satellite Energy Corporation. As such, its use constitutes a violation of the regulations at 43 CFR 3112.2-1(b), effective August 22, 1983, which prohibit an applicant from using an address of a filing service. \* \* \* [I]n view of these violations, and in

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1/ BLM also cancelled lease M 60437 for additional reasons. In view of our holding herein that Satellite 8309119 did violate the regulation prohibiting use of a filing service's address, it is unnecessary to address these additional grounds for cancellation.

accordance with regulation 43 CFR 3112.5-1, effective August 22, 1983, oil and gas lease M 60437 is hereby cancelled.

The address used by Satellite 8309119 on its application was "P.O. Box 169, Smithtown, NY 11787." Satellite 8309119 appealed BLM's decision to this Board. 2/

[1] We have previously considered a related situation involving other Satellite groups. In Satellite 8211104, 89 IBLA 388 (1985), aff'd, Satellite 8301123 v. Hodel, supra, we affirmed BLM's rejection of applications by Satellite groups for using the following address: "10 Siracusa Boulevard, Smithtown, New York 11787," which was the home address of Terence R. Corwin, president of SEC. In that decision, we extensively examined the practices by which SEC assembled the various Satellite groups and concluded that these groups were not distinct, self-governing entities, but, to the contrary, were being completely managed by employees of SEC. In these circumstances, we held, using the address of the president of SEC presented great opportunity for abuse and was, therefore, tantamount to using the address of SEC itself. 3/ We concluded that, as there was no dispute that SEC was a "filing service" within the meaning of 43 CFR 3112.2-1, use of its address on the application was expressly prohibited by this provision, and that rejection of the application by BLM was mandated. Id. at 392. 4/

The administrative record submitted by BLM demonstrates that the practices used by SEC at the time of the filing of Satellite 8309119's application

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2/ Satellite 8309119's appeal was originally filed by attorneys secured by SEC. However, these attorneys, who represented many Satellite groups in appeals from similar decisions by BLM, withdrew their appearance. Subsequently, Satellite 8309119's appeal has been prosecuted by Ervin F. Bork, a client of SEC and a member of Satellite 8309119, who has filed a statement of reasons in support of its appeal and other appeals filed by groups of which he was a member.

3/ The main purpose of the requirement that the applicant's personal address be used rather than that of the filing service was to ensure that communication between the Government and the applicant or between prospective purchasers and the applicant is not blocked by the filing service. Where a filing service controls all knowledge of the successful applications of its clients, the potential for abuse, such as theft of lease interests, is great.

4/ We have recently applied Satellite 8211104, supra, in several orders affirming BLM's rejection of applications filed by Satellite groups: Satellite 8410253, IBLA 86-532 (Order of July 27, 1987); Satellite 8309175, IBLA 86-552 (Order of Sept. 24, 1987); Satellite 8408339, IBLA 86-584 (Order of Sept. 24, 1987); Satellite 8410253, IBLA 86-591 (Order of Aug. 27, 1987); Satellite 8309193, IBLA 86-825 (Order of Sept. 24, 1987); Satellite 8309193, IBLA 86-826 (Order of Sept. 24, 1987); Satellite 8408111, IBLA 86-1005 (Order of Aug. 27, 1987); Satellite 8410253, IBLA 86-1175 (Order of July 27, 1987).

were similar to those that we considered in Satellite 8211104, supra. Appellant has filed nothing to show that its group was managed differently. It is evident that SEC selected the parcels and completed the applications for all the Satellite groups, so that it is also clear that SEC acted as a "filing service" for Satellite 8309119 within the meaning of the regulations.

We note that the address used on appellant's application, P.O. Box 169, Smithtown, New York 11787, was different than that used in Satellite 8211104, supra. However, the record before the Board shows that this post office box was rented by Terence R. Corwin, and that he and other associates of SEC had exclusive access to it. <sup>5/</sup> Thus, there is no meaningful distinction between the post office box address used here and the home address used in Satellite 8211104, supra. Both addresses were within the exclusive control of SEC, not the Satellite groups, so that SEC could effectively block communication between the groups and BLM or prospective purchasers of any leases won by the groups.

Following Satellite 8211104, supra, we hold that, by using the post office box rented and exclusively controlled by officers of SEC as the address on its application, Satellite 8309119 was merely using an alternate address for SEC, its filing service. Thus, Satellite 8309119's application violated the terms of 43 CFR 3112.2-1(b), under which "the address of any \* \* \* entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system shall not be used." It is clear, then, that the application was subject to rejection under 43 CFR 3112.5-1(a), which provides that "[a]ny application determined by adjudication as not meeting the requirements of [43 CFR Subpart 3112] shall be rejected." However, the application was not rejected and a lease was issued.

[2] In these circumstances, BLM was required to cancel the lease issued pursuant to this defective application. The Secretary of the Interior has the authority to cancel by administrative decision an oil and gas lease which was invalid at its inception because it was issued in violation of Departmental regulations. Boesche v. Udall, 373 U.S. 472 (1963); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). Although the Department has discretion whether or not to issue an oil and gas lease for a given tract of land, if a noncompetitive lease is issued, the Department is under a statutory duty to issue the lease to the first qualified applicant who files on the parcel. 30 U.S.C. § 226(c) (1982); Udall v. Tallman, 380 U.S. 1, 4 (1965).

We hold that Satellite 8309119, by violating the express terms of 43 CFR 3112.2-1(b), failed to submit an application that would qualify it to receive an oil and gas lease. The Department is bound by its regulations, and under the express terms of 43 CFR 3112.5-1(a), this application should have been rejected. Administrative cancellation is required where, as here,

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<sup>5/</sup> Wyoming State Office, Bureau of Land Management, Report of Investigation on Satellite Energy Corporation at I-3, V-3, and Exh. V-2-5 (1985).

BLM discovers following issuance of the lease that it was issued in violation of the regulations governing the filing of simultaneous applications. See Emery Energy, Inc., 90 IBLA 70 (1985).

Ervin F. Bork, who has prosecuted this appeal on behalf of Satellite 8309119, does not dispute that its application was defective, but argues that BLM was at fault for not disclosing earlier that there were problems in SEC's application processes. He notes that, due to a lengthy investigation by BLM, it was not until after sizeable contributions had been made by SEC's clients that BLM began to cancel leases and reject applications. Bork also suggests that BLM should be estopped from cancelling the lease because it had previously accepted it.

BLM may not be faulted for the manner in which it handled the task of adjudicating the hundreds of applications filed by Satellite groups. Although BLM might not at first have been aware of the defects in the applications filed by these groups, this is because there was little information available to BLM at that time on which any finding of impropriety could be based. It was only prudent for BLM to assemble evidence prior to taking adverse action against all of SEC's client groups. Assembling such information (including information about who controlled the post office box used by SEC) took time, as SEC did not cooperate in providing BLM with information needed to determine the details of its filing procedures. Thus, there was ample reason for the delay between lease issuance and cancellation here.

The prohibition against use of a leasing service's address on a simultaneous lease application dates back to 1979 and was set out explicitly in Departmental regulations in effect in 1983. 43 CFR 3112.2-1(b). Thus, had appellant reviewed the filing procedures being employed by his agent, SEC, it would have been evident that SEC did not comply with these regulations. The consequences of failing to comply, rejection of the application, were equally clearly set out in these regulations 43 CFR 3112.5-1(a).

In any event, a delay by BLM in cancelling a lease does not prevent cancellation. See Warren L. Jacobs, 71 IBLA 385 (1983). Further, the United States is not bound or estopped by the acts of its officers or agents when they cause to be done what the law does not sanction or permit. 43 CFR 1810.3(b). As noted above, under Departmental regulations, this lease should not have been issued. Upon ascertaining that the application was defective, BLM was under an obligation to correct its error in issuing the lease by administratively cancelling it. Bernard Kosik, 70 IBLA 373 (1983).

Finally, we hold that the individual members of the Satellite groups may not distance themselves from the violations committed in their names by SEC. By selecting SEC as their agent to file applications in the simultaneous oil and gas lease system, persons assumed the risk that these applications would not be prepared properly. Cancelling leases arising from faulty applications prepared by a leasing service preserves the integrity of the simultaneous application system by discouraging the public from using services that abuse it.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton  
Chief Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge.

